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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 537

STANDARD-VACUUM OIL COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The two opinions on behalf of the majority and the dissenting opinion in the Court of Claims are not yet reported. They are set forth at pages 1a-9a of petitioner's Appendix.

JURISDICTION

The judgment of the Court of Claims was entered July 12, 1957. The petition for a writ of certiorari was filed on October 8, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the court below correctly ruled that the United States is not obligated to pay for occupancy of petitioner's land in Japan by personnel of the Ameri-

can Eighth Army because (a) the property was a resource of an enemy nation, (b) the dominion exerted over it by Japan in seizing it during the war and subsequently turning it over to the Allied Powers was lawful and is not open to question by American courts, (c) the occupancy of the property was on behalf of the Allied Powers, not the United States alone, (d) the Allied Powers required Japan to pay for use of the property as part of the cost of rehabilitation and Japan has tendered compensation to petitioner, and (e) that compensation, being in the amount fixed by the Japanese Rent Control Ordinance, is just compensation.

STATEMENT

Prior to the war with Japan, petitioner, a Delaware corporation, owned ten parcels of land in Japan containing residences, an office building, and petroleum distribution facilities (Pet. App. 9a). Japan designated these properties as enemy properties and seized them in 1942 and 1943. They were recorded with its Enemy Property Custodian (Pet. App. 10a).

Japan surrendered on September 2, 1945. Immediately thereafter, forces of the Allied Powers commenced the military occupation and control of Japan under General Douglas MacArthur, as Supreme Commander for the Allied Powers (Pet. App. 10a-11a). On September 3, 1945, the Supreme Commander issued a directive to the Japanese government requiring it to place at the disposal of the Occupation Forces of the Allied Powers all local resources required for their use in accomplishing the terms of the surrender. Procurement procedures and regulations

were established. Pursuant to them, the properties involved here were demanded from the Japanese government for the use of military units of respondent, as part of the Occupation Forces of the Allied Powers, and the properties were turned over to and used by the Eighth Army of the United States. The Eighth Army was the sole procuring agency for Japanese supplies, real estate, construction, and services for all the Occupation Forces of the Allied Powers in Japan. The procurement demands were made individually for the several properties between September 1945 and January 1947 (Pet. App. 11a-13a).

In 1947 the Supreme Commander was authorized to restore to allied owners property which had been seized by Japan, provided that the restoration should be made without expense to the owners and without prejudicing their claims against Japan for damages to property, rent, depreciation, and other losses. The Supreme Commander issued instructions to the Japanese government concerning the procedure to be followed in effecting restoration. In those cases where the property was under procurement demand by the Occupation forces, the Japanese government was directed to restore title to the owner immediately upon issuance by the Supreme Commander of a directive ordering restoration of the property, and to restore possession after release from procurement demand (Pet. App. 13a-14a, 19a-27a). Under that procedure, title to the properties involved here was restored to petitioner on various dates between June 1948 and May 1949 (Pet. App. 16a). The Supreme Commander released the properties back to Japan at various times

between June 1948 and April 1953 and possession was thereupon restored to petitioner (Pet. App. 12a).

As part of the costs of occupation of Japan by the Allied Powers, the Japanese government agreed to pay and was required to pay rental to petitioner for use of the properties which were under procurement demand. The Japanese government on numerous occasions tendered to petitioner the amount of rental due under Japanese law in accordance with the Imperial Japanese Rent Control Ordinance, but petitioner refused the tender on the ground that it was not bound by Japanese rent control law (Pet. App. 12a-13a).

Petitioner sought payment from the United States for the fair rental value of the property from the time title was restored until possession was returned and, upon being refused, instituted this action to recover $375,000, with interest, under the Fifth Amendment to the Constitution. The Court of Claims in two opinions on behalf of the majority held that the United States was not liable. One Judge dissented (Pet. App. 1a-9a).

Two Judges ruled that Japan had legally seized the properties, that the properties were in turn legally taken from Japan by the Allied Powers, that the occupation was not an act by the United States but by the Allied Powers so that there was no taking from petitioner by the United States (Pet. App. 1a-5a). Two other Judges ruled that there was use by the United States forces, or allied forces, of housing furnished to them by Japan, that the property was taken by the Japanese government for the purposes of that government and that the rent tendered to petitioner was at the rate which was legal under the laws of

Japan. The dissenting Judge held that, although the occupation of Japan was a joint enterprise, each of the Allied Powers was responsible for the expense of quartering its own troops, that petitioner's property was not enemy property after the surrender, and that, while the victor has the right to require the conquered enemy to pay the cost of occupation, this does not mean that the United States can shift to Japan the responsibility the United States is under to one of its own citizens for the taking of his property.

ARGUMENT

Petitioner acknowledges that the general rule is that courts of the United States "will not undertake to question the seizure of American private property by another sovereign government within its territorial borders" (Pet. 8). However petitioner contends, that the rule should be modified "if it is established that the Executive branch has determined that the courts should be relieved from applying the general rule" (Pet. 8-9). On this premise petitioner further asserts that "the lower Court has upheld the validity of the very same confiscatory measures which the Executive branch previously repudiated and upon the victory, set aside with a direction compelling restitution of property wrongfully seized by the Japanese government" (Pet. 8). That reasoning is ineffective because, even if such a qualification exists, the decision below gives effect precisely to the Executive determination relative to property in Japan that "all local resources" shall be available to the Allied Powers and that the Japanese government shall pay the rental

for use by the Allied Powers of such local resources owned by United Nations nationals (Pet. App. 11a, 12a, 20a, 23a, 24a).

Similarly, petitioner misconceives the facts and law in contending that the program of the Allied Powers for restoration of properties is of "doubtful advantage if such restoration can be indefinitely delayed without compensation" (Pet. 10). As the Findings of Fact state, the "Japanese Government agreed to pay and was obligated and required to pay rental to the plaintiff for the use of the properties by military units of the defendant as one of the Allied Occupying Powers" (Pet. App. 12a). Such compensation has been tendered to petitioner "on numerous occasions" by the Japanese government (Pet. App. 12a). The fact that the amount of rental was the amount fixed by Japanese law under its Rent Control Ordinance does not render it less than just compensation. That rental is the existing market value for property located in Japan. Such a controlled price normally satisfies the requirement of the Fifth Amendment in the United States. *United States* v. *Commodities Corp.*, 339 U.S. 121. There is no reason why it should not be just compensation for property in Japan.[1]

The fact that the property was used and occupied by the Eighth Army of the United States did not, in the circumstances, make the occupation a project

[1] The memorandum of April 18, 1949, to the Japanese Government by the Supreme Commander entitled "Restoration of Legal Rights and Interests to United Nations Nationals" provided that "All restorations will be carried out in conformity with existing Japanese Law" (Pet. App. 27a).

solely of the United States. The Eighth Army was designated by the Supreme Commander for the Allied Powers as the "procuring agency for Japanese supplies, real estate, construction, and services for all the occupation forces in Japan" (Pet. App. 13a). In performing such function for the Allied Powers, it had to have living quarters. Those living quarters were serving the function assigned to it by the Allied Powers as much as any property which it procured.

The Allied Powers provided the means of paying for the use of such property. Since the use served the purpose which the Allied Powers undertook jointly to promote—namely, the rehabilitation of Japan—they reasonably required the Japanese government to pay for that rehabilitation. *Anglo Chinese Shipping Company, Ltd.* v. *United States*, 130 C.Cls. 361. They did not apportion the cost in any fashion among themselves. Japan has repeatedly tendered fair compensation to petitioner (Pet. App. 12a). On that state of facts, there is no basis for requiring the United States to pay petitioner.

The decisions relied upon by petitioner (Pet. 11) do not support its position. In *Seery* v. *United States*, 130 C.Cls. 481, the Austrian property involved was held to be in liberated country, not in enemy territory, and the United States had assumed an obligation to pay for claims of the kind there involved. In *Anglo Chinese Shipping Company, Ltd.* v. *United States*, 130 C.Cls. 361, the court did not say that the Allied occupation of Japan was a joint venture for which each government was individually responsible, as petitioner contends (Pet. 11), but merely raised

the question and stated that "we do not now decide it" (p. 367).

The decision below presents no conflict of decisions. It rests on its own particular facts and upon Executive foreign policy in Japan after World War II, and will not recur in the future. No constitutional right has been abridged because compensation, if owing, has been provided for and has been tendered in an amount which is just under the Fifth Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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